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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 FRANCOIS TABI,
11 Plaintiff,
12 v.
13 OFFICER MCCULLOUGH, et al.,
14 Defendants.
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Case No. CV 17-1795 DMG (JC)

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION
WITHOUT PREJUDICE DUE TO
LACK OF PROPER SERVICE

16 **I. BACKGROUND**

17 On March 6, 2017, plaintiff paid the filing fee and filed a complaint against
18 multiple employees of the Los Angeles Department of Transportation (“LADOT”):
19 Officer McCullough, Officer Enriquez, J. Atkinson, T. Mayer, Kenneth Heinsuis,
20 and four unnamed defendants (collectively “defendants”). On March 7, 2017, the
21 assigned Magistrate Judge issued an Order Regarding Service of Process (“March
22 Order”) advising plaintiff that pursuant to Rule 4(m) of the Federal Rules of Civil
23 Procedure, service of the summons and complaint must be accomplished on each
24 defendant within 90 days after filing the complaint, *i.e.*, by June 5, 2017. The
25 March Order directed plaintiff to file separate proof of service forms for each
26 defendant served within the 90-day period, and cautioned plaintiff that his failure
27 to effectuate proper service by June 5, 2017, might result in dismissal of the action
28 without prejudice as to any unserved defendant. The

1 March Order also provided plaintiff with information about the Federal “Pro Se”
2 Clinics that offer on-site information and guidance to individuals like plaintiff who
3 are representing themselves in federal civil actions. This Court agrees with and
4 adopts the March Order.

5 On June 2, 2017, plaintiff filed the currently operative First Amended
6 Complaint against the same defendants. On June 5, 2017, plaintiff filed a “Proof
7 of Service” for each of the named defendants which, in pertinent part, essentially
8 represented that a process server had attempted service simply by delivering
9 “summonses and the complaints” for all five named defendants to an individual at
10 the LADOT main office.

11 On August 11, 2017, plaintiff filed a Request for Entry of Default Judgment
12 (“Request”), seeking the entry of a default judgment against each of the named
13 defendants pursuant to Rule 55(b) of the Federal Rules of Civil Procedure. On
14 September 12, 2017, the Magistrate Judge issued an Order (“September Order”)
15 denying the Request without prejudice because, as explained in detail therein,
16 plaintiff failed to demonstrate that he had properly effectuated service of process
17 on any of the defendants in the manner required by the Federal Rules of Civil
18 Procedure. The September Order also *sua sponte* extended to October 13, 2017,
19 plaintiff’s deadline to effect proper service of process upon the defendants and to
20 file proofs of service so reflecting, and again cautioned plaintiff that his failure to
21 effectuate proper and timely service and to file proofs of service so demonstrating
22 might result in dismissal of the action without prejudice as to any unserved
23 defendant by reason of plaintiff’s failure to prosecute, unless plaintiff could show
24 good cause for further extending the time for service. This Court agrees with and
25 adopts the September Order and the findings therein.

26 As the extended service deadline expired without further action by, or
27 communication from plaintiff, the Magistrate Judge, on November 22, 2017, issued
28 an Order to Show Cause (“OSC”) directing plaintiff, within seven days, to show

1 cause, if there be any, why proper service was not timely made on any of the
2 defendants and why the case should not be dismissed without prejudice for failure
3 to effectuate service and for lack of prosecution. The OSC cautioned plaintiff that
4 the failure timely to respond to the OSC or to show cause, might result in the
5 dismissal of the action without prejudice for failure to effectuate service and/or for
6 lack of prosecution. This Court agrees with and adopts the OSC and the findings
7 therein.

8 Plaintiff did not timely respond to the OSC. On December 4, 2017,
9 however, plaintiff filed a tardy Response to the OSC (“Response”) in which he
10 essentially conceded that he had not effected proper service upon any of the
11 defendants, made multiple unsworn and otherwise unsupported allegations as to
12 why the defendants had not been properly and timely served, and sought ten
13 additional weeks to effect service. More specifically, plaintiff alleged that service
14 had not been timely made upon the defendants because (i) “the [LADOT] hides
15 behind a phalanx of security goons whose specific purpose is to prevent Service of
16 Process”; (ii) process servers contacted by plaintiff refused to effect service
17 because the “[LADOT] was apparently notorious for its policies and procedures
18 relating to Service of Process”; (iii) “[t]he process server [plaintiff] paid to effect
19 service was apparently deceived and misdirected by the [LADOT]”; and
20 (4) defendants did not return plaintiff’s request for voluntary waiver of service.
21 (Response at 2). Plaintiff offered no evidence to support these assertions.

22 **II. DISCUSSION**

23 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service of the
24 summons and complaint must be accomplished on each defendant within 90 days
25 after the filing of the complaint. Fed. R. Civ. P. 4(m). A court may, *sua sponte*,
26 dismiss a complaint due to lack of service after giving notice to the plaintiff and an
27 opportunity for the plaintiff to show good cause for the failure to effect timely
28 service. Id.; Crowley v. Bannister, 734 F.3d 967, 975 (9th Cir. 2013) (citations

1 omitted). The Court’s discretion under Rule 4(m) is “broad.” In re Sheehan, 253
2 F.3d 507, 513 (9th Cir. 2001) (citation omitted).

3 To show good cause for a delay in effecting service, a plaintiff generally
4 must show “that service has been attempted but not completed, that plaintiff was
5 confused about the requirements of service, or that plaintiff was prevented from
6 serving defendants by factors beyond his control.” Chemehuevi Indian Tribe v.
7 Wilson, 181 F.R.D. 438, 440 (N.D. Cal. 1998) (citation omitted). A plaintiff’s
8 mere *pro se* status does not excuse a complete failure to properly effect service.
9 See Systems Signs Supplies v. United States Department of Justice, Washington,
10 D.C., 903 F.2d 1011, 1013 (5th Cir. 1990); see also King v. Atiyeh, 814 F.2d 565,
11 567 (9th Cir. 1987) (“Pro se litigants must follow the same rules of procedure that
12 govern other litigants.”), overruled on other grounds, Lacey v. Maricopa County,
13 693 F.3d 896 (9th Cir. 2012).

14 Here, plaintiff has not timely effected proper service on any defendant and,
15 after his initial unsuccessful attempts to effect service, was already afforded a
16 generous extension of time to do so. Plaintiff’s unsupported and general
17 allegations as to why he has still not effected service do not show good cause. Nor
18 does he present any basis to conclude that the Court should exercise its discretion
19 to afford him additional time – let alone ten additional weeks – to effect service.
20 This action has been pending for more than nine months. Plaintiff has already
21 been afforded a significant extension of the 90-day deadline and ample notice that
22 his failure timely to effectuate service or to show good cause for failing to do so
23 may result in dismissal of this action. Accordingly, dismissal of this action without
24 prejudice is appropriate at this juncture.

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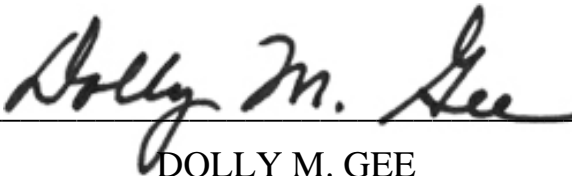
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1 **III. ORDERS**

2 IT IS THEREFORE ORDERED that this action is dismissed without
3 prejudice.

4 IT IS SO ORDERED.

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6 DATED: December 21, 2017

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9 DOLLY M. GEE
UNITED STATES DISTRICT JUDGE